

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 166

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

RELATING TO THE RIGHT TO FARM; AMENDING SECTION 22-4502, IDAHO CODE, TO DEFINE A TERM AND TO REVISE DEFINITIONS; AMENDING SECTION 22-4503, IDAHO CODE, TO REVISE PROVISIONS PROVIDING THAT A CERTAIN OPERATION, FACILITY AND EXPANSION ARE NOT A NUISANCE AND TO REVISE PROVISIONS RELATING TO AN EXCEPTION; AMENDING SECTION 22-4504, IDAHO CODE, TO REVISE PROVISIONS RELATING TO LOCAL ORDINANCES; AMENDING CHAPTER 45, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-4505, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO NUISANCE ACTIONS AND ATTORNEY'S FEES; AMENDING CHAPTER 45, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-4506, IDAHO CODE, TO PROVIDE FOR SEVERABILITY; AND AMENDING SECTION 50-2018, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 22-4502, Idaho Code, be, and the same is hereby amended to read as follows:

22-4502. DEFINITIONS. As used in this chapter:

(1) "Agricultural facility" includes, without limitation, any land, building, structure, ditch, drain, pond, impoundment, appurtenance, machinery or equipment that is used in an agricultural operation.

(2) "Agricultural operation" means an activity or condition that occurs in connection with the production of agricultural products for food, fiber, fuel and other lawful uses, and includes, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticultural crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products, and the processing for commercial purposes of livestock or agricultural commodities, including the processing of such commodities into food commodities:

(a) Construction, expansion, use, maintenance and repair of an agricultural facility;

(b) Preparing land for agricultural production;

(c) Applying pesticides, herbicides or other chemicals, compounds or substances labeled for insects, pests, crops, weeds, water or soil;

(d) Planting, irrigating, growing, fertilizing, harvesting or producing agricultural, horticultural, floricultural and viticultural crops, fruits and vegetable products, field grains, seeds, hay, sod and nursery stock, and other plants, plant products, plant byproducts, plant waste and plant compost;

(e) Breeding, hatching, raising, producing, feeding and keeping livestock, dairy animals, swine, fur-bearing animals, poultry, eggs, fish and other aquatic species, and other animals, animal products and an-

1 imal byproducts, animal waste, animal compost, and bees, bee products
 2 and bee byproducts;

3 (f) Processing and packaging agricultural products, including the
 4 processing and packaging of agricultural products into food and other
 5 agricultural commodities;

6 (g) Manufacturing animal feed;

7 (h) Transporting agricultural products to or from an agricultural fa-
 8 cility;

9 (i) Noise, odors, dust, fumes, light and other conditions associated
 10 with an agricultural operation or an agricultural facility;

11 (j) Selling agricultural products at a farmers or roadside market;

12 (k) Participating in a government sponsored agricultural program.

13 (23) "Nonagricultural activities," for the purposes of this chapter,
 14 means residential, commercial or industrial property development and use
 15 not associated with the production of ~~food commodities~~ agricultural prod-
 16 ucts.

17 (34) "Improper or negligent operation" means that the agricultural
 18 operation is not undertaken in conformity with federal, state and local laws
 19 and regulations or permits, and adversely affects the public health and
 20 safety.

21 SECTION 2. That Section 22-4503, Idaho Code, be, and the same is hereby
 22 amended to read as follows:

23 22-4503. AGRICULTURAL OPERATION, AGRICULTURAL FACILITY OR EXPANSION
 24 THEREOF NOT A NUISANCE -- EXCEPTION. No agricultural operation, agricul-
 25 tural facility or an appurtenance to it expansion thereof shall be or become
 26 a nuisance, private or public, by any changed conditions in or about the
 27 surrounding nonagricultural activities after the same it has been in oper-
 28 ation for more than one (1) year, when the operation, facility or expansion
 29 was not a nuisance at the time the operation it began; provided, that or was
 30 constructed. Tthe provisions of this section shall not apply whenever a
 31 nuisance results from the improper or negligent operation of any agricul-
 32 tural operation, agricultural facility or an appurtenance to it expansion
 33 thereof. In the event of an alleged nuisance resulting from agricultural
 34 operations pursuant to a federal or state environmental permit or caused by
 35 a violation of the permit(s), terms or conditions, the affected party shall
 36 seek enforcement of the terms of the permit.

37 SECTION 3. That Section 22-4504, Idaho Code, be, and the same is hereby
 38 amended to read as follows:

39 22-4504. LOCAL ORDINANCES. No city, county, taxing district or other
 40 political subdivision of this state shall adopt any ordinance or resolu-
 41 tion that declares any agricultural operation, agricultural facility or
 42 expansion thereof that is operated in accordance with generally recognized
 43 agricultural practices to be a nuisance, nor shall any zoning ordinance that
 44 requires abatement as a nuisance or forces the closure of any such agricul-
 45 tural operation or agricultural facility be adopted. Any such ordinance
 46 or resolution shall be void and shall have no force or effect. Zoning and
 47 nuisance ordinances shall not apply to agricultural operations and agri-

1 cultural facilities that were established outside the corporate limits of
 2 a municipality and then were incorporated into the municipality by annexa-
 3 tion. The county planning and zoning authority may adopt a nuisance waiver
 4 procedure to be recorded with the county recorder or appropriate county
 5 recording authority pursuant to residential divisions of property.

6 SECTION 4. That Chapter 45, Title 22, Idaho Code, be, and the same is
 7 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 8 ignated as Section 22-4505, Idaho Code, and to read as follows:

9 22-4505. NUISANCE ACTIONS -- ATTORNEY'S FEES. (1) An agricultural op-
 10 eration, agricultural facility or expansion thereof shall not be found to be
 11 a nuisance under the circumstances described in section 22-4503, Idaho Code.

12 (2) An agricultural operation, agricultural facility or expansion
 13 thereof that is operated in accordance with generally recognized agricul-
 14 tural practices or in compliance with a state or federally issued permit
 15 shall not be found to be a public or private nuisance. The provisions of
 16 this subsection shall not apply when a nuisance results from the improper or
 17 negligent operation of an agricultural operation, agricultural facility or
 18 expansion thereof.

19 (3) An owner or operator of an agricultural operation or an agricul-
 20 tural facility who prevails in an action asserting that the operation or fa-
 21 cility is a nuisance shall be entitled to recover the full costs, expenses
 22 and attorney's fees incurred as a result of the action.

23 SECTION 5. That Chapter 45, Title 22, Idaho Code, be, and the same is
 24 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 25 ignated as Section 22-4506, Idaho Code, and to read as follows:

26 22-4506. SEVERABILITY. If any provision of this chapter or its appli-
 27 cation to any person or circumstance is held invalid by a court of competent
 28 jurisdiction, the invalidity does not affect other provisions or applica-
 29 tions of the chapter that can be given effect without the invalid provision
 30 or application, and to this end the provisions of this chapter are severable.

31 SECTION 6. That Section 50-2018, Idaho Code, be, and the same is hereby
 32 amended to read as follows:

33 50-2018. DEFINITIONS. The following terms wherever used or referred
 34 to in this chapter, shall have the following meanings, unless a different
 35 meaning is clearly indicated by the context:

36 (1) "Agency" or "urban renewal agency" shall mean a public agency cre-
 37 ated by section 50-2006, Idaho Code.

38 (2) "Municipality" shall mean any incorporated city or town, or county
 39 in the state.

40 (3) "Public body" shall mean the state or any municipality, township,
 41 board, commission, authority, district, or any other subdivision or public
 42 body of the state.

43 (4) "Local governing body" shall mean the council or other legislative
 44 body charged with governing the municipality.

1 (5) "Mayor" shall mean the mayor of a municipality or other officer or
2 body having the duties customarily imposed upon the executive head of a mu-
3 nicipality.

4 (6) "Clerk" shall mean the clerk or other official of the municipality
5 who is the custodian of the official records of such municipality.

6 (7) "Federal government" shall include the United States of America or
7 any agency or instrumentality, corporate or otherwise, of the United States
8 of America.

9 (8) "Deteriorated area" shall mean an area in which there is a predomi-
10 nance of buildings or improvements, whether residential or nonresidential,
11 which by reason of dilapidation, deterioration, age or obsolescence, inad-
12 equate provision for ventilation, light, air, sanitation, or open spaces,
13 high density of population and overcrowding, or the existence of conditions
14 which endanger life or property by fire and other causes, or any combination
15 of such factors is conducive to ill health, transmission of disease, infant
16 mortality, juvenile delinquency, or crime, and is detrimental to the public
17 health, safety, morals or welfare. Provided however, this definition shall
18 not apply to any agricultural operation, as defined in section 22-4502(12),
19 Idaho Code, absent the consent of the owner of the agricultural operation,
20 except for an agricultural operation that has not been used for three (3)
21 consecutive years.

22 (9) "Deteriorating area" shall mean an area which by reason of the pres-
23 ence of a substantial number of deteriorated or deteriorating structures,
24 predominance of defective or inadequate street layout, faulty lot layout
25 in relation to size, adequacy, accessibility or usefulness, insanitary or
26 unsafe conditions, deterioration of site or other improvements, diversity
27 of ownership, tax or special assessment delinquency exceeding the fair value
28 of the land, defective or unusual conditions of title, or the existence of
29 conditions which endanger life or property by fire and other causes, or any
30 combination of such factors, substantially impairs or arrests the sound
31 growth of a municipality, retards the provision of housing accommodations
32 or constitutes an economic or social liability and is a menace to the public
33 health, safety, morals or welfare in its present condition and use; pro-
34 vided, that if such deteriorating area consists of open land the conditions
35 contained in the proviso in section 50-2008(d), Idaho Code, shall apply; and
36 provided further, that any disaster area referred to in section 50-2008(g),
37 Idaho Code, shall constitute a deteriorating area. Provided however, this
38 definition shall not apply to any agricultural operation, as defined in
39 section 22-4502(12), Idaho Code, absent the consent of the owner of the agri-
40 cultural operation, except for an agricultural operation that has not been
41 used for three (3) consecutive years.

42 (10) "Urban renewal project" may include undertakings and activities of
43 a municipality in an urban renewal area for the elimination of deteriorated
44 or deteriorating areas and for the prevention of the development or spread
45 of slums and blight, and may involve slum clearance and redevelopment in an
46 urban renewal area, or rehabilitation or conservation in an urban renewal
47 area, or any combination or part thereof in accordance with an urban renewal
48 plan. Such undertakings and activities may include:

49 (a) Acquisition of a deteriorated area or a deteriorating area or por-
50 tion thereof;

1 (b) Demolition and removal of buildings and improvements;

2 (c) Installation, construction, or reconstruction of streets, utili-
3 ties, parks, playgrounds, off-street parking facilities, public facil-
4 ities or buildings and other improvements necessary for carrying out in
5 the urban renewal area the urban renewal objectives of this chapter in
6 accordance with the urban renewal plan;

7 (d) Disposition of any property acquired in the urban renewal area, in-
8 cluding sale, initial leasing or retention by the agency itself, at its
9 fair value for uses in accordance with the urban renewal plan except for
10 disposition of property to another public body;

11 (e) Carrying out plans for a program of voluntary or compulsory repair
12 and rehabilitation of buildings or other improvements in accordance
13 with the urban renewal plan;

14 (f) Acquisition of real property in the urban renewal area which, under
15 the urban renewal plan, is to be repaired or rehabilitated for dwelling
16 use or related facilities, repair or rehabilitation of the structures
17 for guidance purposes, and resale of the property;

18 (g) Acquisition of any other real property in the urban renewal area
19 where necessary to eliminate unhealthful, insanitary or unsafe condi-
20 tions, lessen density, eliminate obsolete or other uses detrimental to
21 the public welfare, or otherwise to remove or to prevent the spread of
22 blight or deterioration, or to provide land for needed public facili-
23 ties;

24 (h) Lending or investing federal funds; and

25 (i) Construction of foundations, platforms and other like structural
26 forms.

27 (11) "Urban renewal area" means a deteriorated area or a deteriorating
28 area or a combination thereof which the local governing body designates as
29 appropriate for an urban renewal project.

30 (12) "Urban renewal plan" means a plan, as it exists from time to time,
31 for an urban renewal project, which plan:

32 (a) Shall conform to the general plan for the municipality as a whole
33 except as provided in section 50-2008(g), Idaho Code; and

34 (b) Shall be sufficiently complete to indicate such land acquisition,
35 demolition and removal of structures, redevelopment, improvements,
36 and rehabilitation as may be proposed to be carried out in the urban
37 renewal area, zoning and planning changes, if any, land uses, maximum
38 densities, building requirements, and any method or methods of financ-
39 ing such plan, which methods may include revenue allocation financing
40 provisions.

41 (13) "Related activities" shall mean:

42 (a) Planning work for the preparation or completion of a community-wide
43 plan or program pursuant to section 50-2009, Idaho Code; and

44 (b) The functions related to the acquisition and disposal of real prop-
45 erty pursuant to section 50-2007(d), Idaho Code.

46 (14) "Real property" shall include all lands, including improvements
47 and fixtures thereon, and property of any nature appurtenant thereto, or
48 used in connection therewith, and every estate, interest, right and use,
49 legal or equitable, therein, including terms for years and liens by way of
50 judgment, mortgage or otherwise.

1 (15) "Bonds" shall mean any bonds, including refunding bonds, notes,
2 interim certificates, certificates of indebtedness, debentures or other
3 obligations.

4 (16) "Obligee" shall include any bondholder, agents or trustees for any
5 bondholders, or lessor demising to the municipality property used in connec-
6 tion with urban renewal, or any assignee or assignees of such lessor's inter-
7 est or any part thereof, and the federal government when it is a party to any
8 contract with the municipality.

9 (17) "Person" shall mean any individual, firm, partnership, corpora-
10 tion, company, association, joint stock association, or body politic; and
11 shall include any trustee, receiver, assignee, or other person acting in a
12 similar representative capacity.

13 (18) "Area of operation" shall mean the area within the corporate limits
14 of the municipality and the area within five (5) miles of such limits, except
15 that it shall not include any area which lies within the territorial bound-
16 aries of another incorporated city or town or within the unincorporated area
17 of the county unless a resolution shall have been adopted by the governing
18 body of such other city, town or county declaring a need therefor.

19 (19) "Board" or "commission" shall mean a board, commission, depart-
20 ment, division, office, body or other unit of the municipality.

21 (20) "Public officer" shall mean any officer who is in charge of any de-
22 partment or branch of the government of the municipality relating to health,
23 fire, building regulations, or to other activities concerning dwellings in
24 the municipality.